

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

DOMINIC REALE,)	
)	
Plaintiff,)	Civil Action No. 18-229
)	
v.)	Judge Cathy Bissoon
)	
RONALD HOUGH, <i>et al.</i> ,)	Chief Magistrate Judge Maureen P. Kelly
)	
Defendants.)	

MEMORANDUM ORDER

This case was referred to Chief United States Magistrate Judge Maureen P. Kelly for pretrial proceedings in accordance with the Magistrates Act, 28 U.S.C. §§ 636(b)(1)(A) and (B), and Rules 72.C, 72.D and 72.G of the Local Rules for Magistrate Judges.

On September 18, 2018, the Chief Magistrate Judge issued a Report and Recommendation (the “Report,” Doc. 23) recommending that Defendant Ronald Hough’s Motion to Dismiss Counts I and II (Doc. 18) be granted. Objections to the Report were due on October 2, 2018. (Report 10.) No objections to the Report have been filed.

This Court conducted a *de novo* review of the Report, together with the complete record in this case. As the Court agrees with the Report in all material respects, the Court hereby adopts the Report as the opinion of the Court. The Court will grant Defendant’s Motion to Dismiss Counts I and II.

* * *

Accordingly:

IT IS HEREBY ORDERED that Defendant Ronald Hough's Motion to Dismiss Counts I and II (Doc. 18) is GRANTED.

Count I of the Amended Complaint (Doc. 16) is DISMISSED against Defendant Hough, without prejudice to Plaintiff filing a second amended complaint that sufficiently alleges state action to support a Section 1983 Fourth Amendment excessive force claim.

Count II of the Amended Complaint (Doc. 16) is DISMISSED with prejudice against Defendant Hough, as Plaintiff has voluntarily withdrawn that claim. (See Plaintiff's Brief in Opposition to Defendant's Motion to Dismiss 1, Doc. 21 ("Plaintiff hereby withdraws his claim against Defendant Hough at Count II of his Amended Complaint").)

If Plaintiff wishes to file a second amended complaint to address the deficiencies as to Count I, he may do so on or before November 5, 2018. This will be Plaintiff's last and final opportunity to amend his complaint as to Count I against Defendant Hough. See generally Taylor v. Pilewski, 2008 WL 4861446, *3 (W.D. Pa. Nov. 7, 2008) ("[the c]ourt need not provide endless opportunities" for amendment, especially where such opportunity already has been enjoyed); Houser v. Postmaster Gen. of U.S., 573 F. App'x 141 (3d Cir. 2014) (affirming dismissal without leave to amend, based on court's finding that "[it] would be inequitable to require [the d]efendant, who already once ha[d] exhaustively and successfully defended [the p]laintiff's grievances, to respond to a continuous stream of formal and informal attempted amendments"). If Plaintiff does not file an amended complaint by that date, Count I will be dismissed with prejudice against Defendant Hough.

IT IS SO ORDERED.

October 24, 2018

s\Cathy Bissoon

Cathy Bissoon

United States District Judge

cc: Honorable Maureen P. Kelly
Chief United States Magistrate Judge

All Counsel of Record